

Strategic Development Group

Sent: Monday, October 05, 2009 3:30 PM
To: Wise, Shannon; Robinson, Trena
Subject: FW: Response to CDFI Notice and Request for Comments

-----Original Message-----

From: Julia Elrick [mailto:jelrick@sdsigroup.com]
Sent: Friday, October 02, 2009 6:40 PM
To: CDFIHELP
Cc: Debbie La Franchi
Subject: Response to CDFI Notice and Request for Comments

ATTN: Matthew Josephs, NMTC Program Manager

Per the CDFI's Notice and Request for Comments, we have included our responses and additional comments below and attached:

The Fund specifically requests comments concerning the Application, Application review process, and the following questions:

1. Is the information that is currently collected by the Application necessary and appropriate for the Fund to consider for the purpose of making award decisions? Please consider each question and table in the Application. Are there questions or tables that are redundant and/or unnecessary? Should additional questions or tables be added to ensure collection of more relevant information?

It seems as if there are several similar questions throughout the application that could be consolidated in one multi-layered question

It might make sense in terms of progression of questions to have #43 precede #19 and make #19 N/A if the answer to #43 is no.

The following are sections that seem redundant:

#19b as well as #44a-b quantify the Applicant's QLICI track record and could be combined.

#23 is the strategy for identifying borrowers; #19c and #20c ask for strategy of targeting disadvantaged communities and businesses from the QLICI and non-QLICI standpoint; #27c reiterates #19c.; and #25e narrows this to the strategy for targeting Non-Metro.

#30 and #53 both detail the resulting community benefits of NMTCs

#31 asks about the analysis of benefits to LICs which is also in #28b.

2. Are the thresholds contained in Question 17 of the Application appropriate, given current economic conditions? If not, what should the criteria include? Should the Fund provide a range of flexible product commitments based on a discount of

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interest rates below market as defined by basis point reductions (or other product flexibilities) or continue to present commitment options in percentage terms?

We believe the thresholds are still relevant and we have been able to meet them despite the market conditions. The percentage commitments and the ability to hit 5 of the criteria provides flexibility.

3. A CDE is entitled to earn five "priority points" for committing to invest substantially all of its QEI proceeds in businesses in which persons unrelated to the CDE hold the majority equity interest (within the meaning of I.R.C. section 267(b) or 707(b)(1)). With respect to the timing of this test, the CDFI Fund has determined that it is to be applied after the initial investment is made, and for the life of the seven-year compliance period (though an exception is permitted if events unforeseen at the time of the initial investment cause the CDE to have to subsequently take a controlling interest in the business). Is it appropriate that this test is applied after the investment is made, or should the CDFI consider applying this test before the investment is made? If the test is to be applied before the investment is made, then how should the Fund treat circumstances whereby the receipt of the QEI and the investment in the business is essentially a simultaneous transaction, particularly when the CDE may not have any owners identified prior to the QEI closing?

We are not 100% clear on this question/situation as we have always had "unrelated parties," but it seems that you would want to test before and after the investment as at both junctures the related party would benefit from NMTC investment (whether before or after the investment) so both are relevant.

4. The Application currently collects outcome information on the applicant's historic community impacts and projected economic development impacts in Table C1 and Table C2, respectively, and collects information on projected community development impacts in Question 30. Are there changes that should be made in the way projected economic development is currently measured? Are there other outcomes/impacts for which the Fund should be collecting information to ensure effective use of the NMTC? Should the Fund have a greater focus on community development outcomes/impacts? Alternatively, should the Fund focus exclusively on economic development outcomes/impacts?

The projected jobs is just one way of quantifying impact and many people can use IMPLAN or other software for this. The extent of revitalization, new activities, community amenities are all important and should be part of the evaluation.

Question 30.b)ii: The methodology sections could be shorter as there is repetition regarding the methodologies used.

30. c) There needs to be additional guidance on this item from the CDFI as it has

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caused problems with defining affordable housing:

Regarding "For-Sale Housing" the CDFI Fund defines "Affordable Housing" for the purpose of meeting Section 3.2(k) of the allocation agreement as follows: A QLICI that finances for-sale housing units shall meet the requirements of Section 3.2(k) if 20 percent or more of the total for-sale housing units financed with QLICIs are purchased and occupied by individuals with a 38 percent Debt-To-Income Ratio and are owner-occupied by individuals with incomes less than 80 percent of the area medium family income as determined and adjusted annually by HUD at the time the units are sold to the initial homebuyer." It is not clear when the testing should happen, if the debt is total debt or the mortgage to income, or is it total debt to total income? And what type of reporting is needed and when does testing need to happen. CDE's have faced much uncertainty on how the new language should be applied and even the lawyers don't know how to advise their CDE clients on this issue.

5. Do Question 56 and Table F1 of the Application capture all sources of compensation and profits that the applicant and its affiliates receive in connection with NMTC transactions? How can collection of this information be improved? How should the Fund use this information? For example, should the Fund make the applicant's stated fees a specific condition of the Allocation Agreement, and should the Fund set limits on fees in the Allocation Agreement?

This question should focus on all the fees being charged by an allocatee (upfront, annual, loan servicing, investment fund management, etc). We believe the level of fees (or the range) should go within the allocation agreement (can always go lower but not higher).

Collect info on:

- 1) Fee for NMTCs (upfront, annual and back end)
- 2) Loan Servicing Fees
- 3) Investment Fund Servicing Fees
- 4) Any other fees
- 5) Transparency on pricing of the tax credits (for allocatees that are also investors)
- 6) Any other fees relative to the management of the QEI that are charged or received

6. In any given Application round, the Fund requires applicants that have received awards in previous rounds to demonstrate that they have been able to raise minimum threshold amounts of QEIs from their prior awards (see the 2009 NOAA for the current minimum threshold requirements). Are these current minimum threshold

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requirements sufficient? Should the Fund consider using different measurements, such as the amount of QEIs that have been deployed as investments in low-income communities?

Actual deployment of a QEI's would be a better barometer of true activity. Just closing a QEI versus actually funding a QICI are very different. Deployment of QEIs into businesses/projects through the QICI is a much better barometer than just closing the QEI.

7. The Fund generally caps award amounts to any one organization in a given round. In the 2009 Application round, this cap was set at \$125 million. Is this an appropriate amount? Should the Fund consider raising the cap significantly (e.g., to \$250 million), and prohibit a CDE that receives such a large allocation award from applying again for an established period of time?

As a small CDE this proposition causes us concern.

First, it would be mainly larger institutions that would be likely to get such awards, thus concentrating the allocations into fewer hands and putting small firms/organizations at greater disadvantage.

Second, given the very significant challenges in terms of securing investors in the current market, if banks and insurance companies are provided such large allocations they will have dramatically reduced appetites to purchase 3rd party tax credit allocations. Further this would have a negative impact on smaller allocatees that may be high performing and highly impactful, but don't have the ability to purchase their own allocations. This change would be of great concern to us as a small allocatee and we believe would further exacerbate the challenge for allocatees to find investors for the credits.

We hope that if this change is being considered that the ramifications are widely vetted within the industry.

8. In April 2009, the Government Accountability Office released a report titled: "New Markets Tax Credit: Minority Entities Are Less Successful in Obtaining Awards than Non-Minority Entities" (GAO-09-536). Are there actions that the Fund should take in order to increase the number of minority CDE applicants and allocatees?

The CDFI could offer NMTC TA funding program (similar to CDFI TA program) to assist minority organizations that want to strengthen their position for future applications. But we do not think the overall standard should be lowered for such entities as a CDE's strength and performance needs to be top priority when the CDFI selects allocatees. Perhaps greater outreach to minorities through minority organizations would help, but for the program to be successful the standards and scoring should be consistent, so that it is the highest quality applicants that get awarded.

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9. Are there changes that can be made to the application process or elsewhere, that will increase the amount of Qualified Low-Income Community Investments that support activities that have not traditionally received large scale financing from NMTC investment proceeds (e.g., loans and investments for small business operations; loans to and investments in other CDEs, including CDFIs; purchase of loans from other CDEs; etc.)?

If the CDFI indicated directly in the application that they were setting threshold benchmarks for types of investing (similar to what was done in the case of rural thresholds) in specified areas it would likely motivate some applicants to pursue different investment strategies. We would favor this type of incentive and scoring change as business finance is extremely important right now.

10. Currently, the Fund uses economic distress factors from the most recent decennial census to qualify eligible census tracts and to verify, when applicable, that awardees are serving "severely" distressed communities. Are there other public sources of data on economic indicators (e.g., American Community Survey three- and five-year estimates for poverty rate, area median income, and unemployment rate) that are updated more frequently and readily available that the Fund should accept?

For the first 5 years after decennial census info comes out it is appropriate to use; in the second 5 years prior to the next data becoming available the ACS data could be used (for those locations where it is available). For rural areas the ACS doesn't cover the Census would be the default.

Other Comments:

Text: Would be nice if when you start to answer questions in the application that it WOULD NOT automatically indent for each new section. We find that this automatic indenting makes our text look much less organized for the reader (as every separate section is indented - even headers and subsections we try to create). This makes it harder for the readers as we as writers can't modify the formatting in a manner to make the text clearer.

D TABLES: There should be a way to copy entries in one D Table into the next - having to re-enter individuals line by line multiple times takes a lot of time. If there was a way to enter the individual's basic info that is asked in each table and select which Tables it should be included in automatically, then each Table's specific info could be added more easily.

#44. Both a) and b) fields could be lengthened as Allocatees increasingly have fuller track records of experience to detail

#20a This section should be lengthened, especially for new applicants whose track record of experience will be based more heavily on non-QLICI products and services.

#24 It would be helpful to lengthen both a) and b)

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